



Download Zipped Amended WP 9 SB0208S2.ZIP

[\[Introduced\]](#) [\[Status\]](#) [\[Bill Documents\]](#) [\[Fiscal Note\]](#) [\[Bills Directory\]](#)

## Second Substitute S.B. 208

This document includes Senate Committee Amendments incorporated into the bill on Mon, Feb 24, 2003 at 3:29 PM by smaeser. -->

**Senator Bill Wright** proposes the following substitute bill:

1

### WARRANT FOR REMOVAL OF MINOR FROM

2

### HOME

3

2003 GENERAL SESSION

4

STATE OF UTAH

5

**Sponsor: Bill Wright**

6 **This act modifies the Human Services Code and the Judicial Code. The act provides**

that

7 **a minor may not be removed from the minor's home or school or be taken into**

protective

8 **custody with or without a criminal warrant unless the minor's parent or guardian**

9 **consents, or there is probable cause to believe any one or more of enumerated**

10 **circumstances exist. The act amends and clarifies the grounds for a court ordering**

that a

11 **minor be removed from the minor's home or otherwise taken into protective**

custody,

12 **after the filing of a petition alleging abuse, neglect, or dependency. The act makes**

13 **technical changes. The act amends provisions relating to the authority to issue**

search

14 **warrants and subpoenas.**

15 This act affects sections of Utah Code Annotated 1953 as follows:

16 **AMENDS:**

17 **62A-4a-202.1**, as last amended by Chapter 265, Laws of Utah 2002

18 **78-3a-106**, as last amended by Chapter 265, Laws of Utah 2002

19 **78-3a-306**, as last amended by Chapter 265, Laws of Utah 2002

20 *Be it enacted by the Legislature of the state of Utah:*

21 Section 1. Section **62A-4a-202.1** is amended to read:

22 **62A-4a-202.1. Taking a minor into protective custody with or without warrant or**

23 **court order -- Peace officer -- Division of Child and Family Services caseworker --**  
 24 **Consent or specified circumstances -- Shelter care or emergency kinship.**  
 25 (1) A state officer, peace officer, or child welfare worker may not, without [a] *the*

Text Box

- 2 -

Senate Committee Amendments 2-24-2003 sm/sms

26

*consent of the minor's parent or guardian, a S* ~~[-criminal]~~ *s warrant, or a court order issued under*  
 27 Section 78-3a-106 , remove a minor from the minor's home or school, or take a minor into  
 28 protective custody unless[\*] *there exist exigent circumstances.*  
 29 [(a) a parent or guardian consents; or]  
 30 [(b) the officer or worker has, at the time, probable cause to believe that one or more of  
 31 the following circumstances exist:]  
 32 [(i) there is imminent danger to the physical health or safety of the minor, and the  
 33 minor's physical health or safety may not be protected without removing the minor from  
 the  
 34 custody of the minor's parent or guardian;]  
 35 [(ii) there is a substantial risk to the minor of being physically or sexually abused by a  
 36 parent or guardian, a member of the parent's or guardian's household, or another person  
 known  
 37 to the parent or guardian;]  
 38 [(iii) the parent or guardian is unwilling to have physical custody of the minor;]  
 39 [(iv) the minor has been abandoned without any provision for the minor's support;]  
 40 [(v) a parent who has been incarcerated or institutionalized has not arranged or cannot  
 41 arrange for safe and appropriate care for the minor;]  
 42 [(vi) a relative or other adult custodian with whom the parent or guardian has left the  
 43 minor is unwilling or unable to provide care or support for the minor, the whereabouts of  
 the  
 44 parent or guardian are unknown, and reasonable efforts to locate the parent or guardian  
 have  
 45 been unsuccessful; or]  
 46 [(vii) an infant has been abandoned, as defined in Section 78-3a-313.5-].  
 47 [(2) A state officer, peace officer, or child welfare worker may not remove a minor  
 from  
 48 the minor's home or school or take a minor into protective custody under Subsection (1) if  
 49 motivated solely by an intent to seize or obtain evidence unrelated to the potential abuse  
 or  
 50 neglect allegation;]  
 51 [(3) In the absence of circumstances that demonstrate a substantial, immediate threat to  
 52 the health or safety of a minor, a state officer, peace officer, or child welfare worker may  
 not  
 53 remove a minor from the minor's home or school or take a minor into protective custody  
 under  
 54 Subsection (1) on the basis of:]

55 ~~[(a) mental illness or poverty of the parent or guardian; or]~~  
 56 ~~[(b) educational neglect.]~~

## Text Box

- 3 -

57

~~[(4)]~~ (2) A child welfare worker within the division may take action under Subsection  
 58 (1) accompanied by a peace officer, or without a peace officer when a peace officer is not  
 59 reasonably available.

60 ~~[(5)]~~ (3) If possible, consistent with the minor's safety and welfare, before taking a  
 61 minor into protective custody, the worker shall also determine whether there are services  
 62 reasonably available to the worker which, if provided to the minor's parent or to the

minor,

63 would eliminate the need to remove the minor from the custody of the minor's parent or  
 64 guardian. If those services are reasonably available, they shall be utilized. In determining  
 65 whether services are reasonably available, and in making reasonable efforts to provide

those

66 services, the minor's health, safety, and welfare shall be the worker's paramount concern.

67 ~~[(6)]~~ (4) (a) A minor removed or taken into custody under this section may not be  
 68 placed or kept in a secure detention facility pending court proceedings unless the minor is  
 69 detainable based on guidelines promulgated by the Division of Youth Corrections.

70 (b) A minor removed from the custody of the minor's parent or guardian but who does  
 71 not require physical restriction shall be given temporary care in:

72 (i) a shelter facility; or

73 (ii) an emergency kinship placement in accordance with Section 62A-4a-209 .

74 Section 2. Section **78-3a-106** is amended to read:

75 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

76 (1) The court has authority to issue search warrants, subpoenas, or investigative  
 77 subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency

proceedings for

78 the same purposes, in the same manner and pursuant to the same procedures set forth in

the

79 code of criminal procedure for the issuance of search warrants, subpoenas, or

investigative

80 subpoenas in other trial courts in the state.

81 ~~[(2) (a) If it appears to the court upon an affidavit sworn to by a peace officer or any~~  
 82 ~~other person, and upon the examination of other witnesses, if required by the judge, that~~

there

83 ~~is probable cause to believe that a child is being ill-treated by the child's parent, guardian,~~

or

84 ~~eustodian, or is being detained, ill-treated, or harbored against the desires of the child's~~

parent,

85 ~~guardian, or eustodian, in any place within the jurisdiction of the court, the court may~~

issue a

86 ~~warrant authorizing a child protective services worker or peace officer to search for the~~

child

87 ~~and take the child into protective custody.]~~

Text Box

- 4 -

Senate Committee Amendments 2-24-2003 sm/sms

88

89 peace officer to search for a child and take the child into protective custody if it appears  
 to the  
 90 court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a  
 peace  
 91 officer or any other person, and upon the examination of other witnesses, if required by  
 the  
 92 judge, that there is probable cause to believe that:  
 93 (i) there is an immediate threat to the safety of a child; and  
 94 (ii) the applicant certifies to the court in writing or by recorded sworn testimony as to  
 95 the efforts, if any, that have been made to give notice to the minor's parent or guardian  
 and the  
 96 reasons supporting the claim that notice and an opportunity to be heard should not be  
 required.  
 97 (b) A warrant removing a child from his home or school, or having the effect of  
 98 depriving a parent or guardian of the care, custody, and control of their minor child, may  
 not be  
 99 issued without notice to the minor's parents and opportunity to be heard unless the  
 100 requirements of Subsection S [~~78-3a-106(a)(i)~~] 78-3a-106(2)(a)(i) s and(ii) have been  
 satisfied.  
 101 ~~(b)~~ (c) Pursuant to Section 77-23-210 , a peace officer making the search may enter a  
 102 house or premises by force, if necessary, in order to remove the child.  
 103 ~~(c)~~ (d) The person executing the warrant shall then take the child to the place of  
 104 shelter designated by the court.  
 105 (3) The parent or guardian to be notified must be the minor's primary care giver, or  
 the  
 106 person who has custody of the minor, when the order is sought.  
 107 Section 3. Section 78-3a-306 is amended to read:  
 108 **78-3a-306. Shelter hearing.**  
 109 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays  
 110 after any one or all of the following occur:  
 111 (a) removal of the child from his home by the Division of Child and Family Services;  
 112 (b) placement of the child in the protective custody of the Division of Child and  
 Family  
 113 Services;  
 114 (c) emergency kinship placement under Subsection 62A-4a-202.1 [~~(6)~~] (4); or  
 115 (d) as an alternative to removal of the child, a parent has entered a domestic violence  
 116 shelter at the request of the Division of Child and Family Services.  
 117 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)  
 118 through (1)(d), the division shall issue a notice that contains all of the following:

Text Box

- 5 -

119

- (a) the name and address of the person to whom the notice is directed;  
 120 (b) the date, time, and place of the shelter hearing;  
 121 (c) the name of the minor on whose behalf a petition is being brought;  
 122 (d) a concise statement regarding:  
 123 (i) the reasons for removal or other action of the division under Subsection (1); and  
 124 (ii) the allegations and code sections under which the proceeding has been instituted;  
 125 (e) a statement that the parent or guardian to whom notice is given, and the minor, are  
 126 entitled to have an attorney present at the shelter hearing, and that if the parent or  
 guardian is  
 127 indigent and cannot afford an attorney, and desires to be represented by an attorney, one  
 will be  
 128 provided; and  
 129 (f) a statement that the parent or guardian is liable for the cost of support of the minor  
 130 in the protective custody, temporary custody, and custody of the division, and the cost  
 for legal  
 131 counsel appointed for the parent or guardian under Subsection (2)(e), according to his  
 financial  
 132 ability.  
 133 (3) That notice shall be personally served as soon as possible, but no later than one  
 134 business day after removal of a child from his home, on:  
 135 (a) the appropriate guardian ad litem; and  
 136 (b) both parents and any guardian of the minor, unless they cannot be located.  
 137 (4) The following persons shall be present at the shelter hearing:  
 138 (a) the child, unless it would be detrimental for the child;  
 139 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in  
 140 response to the notice;  
 141 (c) counsel for the parents, if one has been requested;  
 142 (d) the child's guardian ad litem;  
 143 (e) the caseworker from the Division of Child and Family Services who has been  
 144 assigned to the case; and  
 145 (f) the attorney from the attorney general's office who is representing the division.  
 146 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's  
 147 parent or guardian, if present, and any other person having relevant knowledge, to  
 provide  
 148 relevant testimony. The court may also provide an opportunity for the minor to testify.  
 149 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of

Text Box

- 6 -

150

Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent  
 151 or guardian, the requesting party, or their counsel, but may in its discretion limit  
 testimony and  
 152 evidence to only that which goes to the issues of removal and the child's need for  
 continued  
 153 protection.  
 154 (6) If the child is in the protective custody of the division, the division shall report to  
 155 the court:  
 156 (a) the reasons why the minor was removed from the parent's or guardian's custody;  
 157 (b) any services provided to the child and his family in an effort to prevent removal;  
 158 (c) the need, if any, for continued shelter;  
 159 (d) the available services that could facilitate the return of the minor to the custody of  
 160 his parent or guardian; and  
 161 (e) whether the child has any relatives who may be able and willing to take temporary  
 162 custody.  
 163 (7) The court shall consider all relevant evidence provided by persons or entities  
 164 authorized to present relevant evidence pursuant to this section.  
 165 (8) If necessary to protect the child, preserve the rights of a party, or for other good  
 166 cause shown, the court may grant no more than one time-limited continuance, not to  
 exceed  
 167 five judicial days.  
 168 (9) If the child is in the protective custody of the division, the court shall order that the  
 169 minor be released from the protective custody of the division unless it finds, by a  
 170 preponderance of the evidence, that any one of the following exist:  
 171 (a) there is a substantial danger to the physical health or safety of the minor and the  
 172 minor's physical health or safety may not be protected without removing him from his  
 parent's  
 173 custody. If a minor has previously been adjudicated as abused, neglected, or dependent  
 and a  
 174 subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima  
 facie  
 175 evidence that the child cannot safely remain in the custody of his parent;  
 176 (b) the minor is suffering emotional damage, as may be indicated by, but is not limited  
 177 to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self  
 or  
 178 others, and there are no reasonable means available by which the minor's emotional  
 health may  
 179 be protected without removing the minor from the custody of his parent;  
 180 (c) the minor or another minor residing in the same household has been physically or

---

Text Box

- 7 -

---

181  
 sexually abused, or is considered to be at substantial risk of being physically or sexually  
 182 abused, by a parent, a member of the parent's household, or other person known to the  
 parent.  
 183 If a parent has received actual notice that physical or sexual abuse by a person known to

the  
 184 parent has occurred, and there is evidence that the parent has allowed the child to be in  
 the  
 185 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the  
 child  
 186 is at substantial risk of being physically or sexually abused;  
 187 (d) the parent is unwilling to have physical custody of the child;  
 188 (e) the minor has been left without any provision for his support;  
 189 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange  
 for  
 190 safe and appropriate care for the minor;  
 191 (g) a relative or other adult custodian with whom the minor has been left by the parent  
 192 is unwilling or unable to provide care or support for the minor, the whereabouts of the  
 parent  
 193 are unknown, and reasonable efforts to locate him have been unsuccessful;  
 194 (h) the minor is in immediate need of medical care;  
 195 (i) the physical environment or the fact that the child is left unattended poses a threat  
 to  
 196 the child's health or safety;  
 197 (j) the minor or another minor residing in the same household has been neglected;  
 198 (k) the parent, or an adult residing in the same household as the parent, has been  
 199 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and  
 any  
 200 clandestine laboratory operation, as defined in Section 58-37d-3 , was located in the  
 residence  
 201 or on the property where the child resided; or  
 202 (l) the child's welfare is otherwise endangered.  
 203 (10) (a) The court shall also make a determination on the record as to whether  
 204 reasonable efforts were made to prevent or eliminate the need for removal of the minor  
 from  
 205 his home and whether there are available services that would prevent the need for  
 continued  
 206 removal. If the court finds that the minor can be safely returned to the custody of his  
 parent or  
 207 guardian through the provision of those services, it shall place the minor with his parent  
 or  
 208 guardian and order that those services be provided by the division.  
 209 (b) In making that determination, and in ordering and providing services, the child's  
 210 health, safety, and welfare shall be the paramount concern, in accordance with federal  
 law.  
 211 (11) Where the division's first contact with the family occurred during an emergency

---

Text Box

- 8 -

212

situation in which the child could not safely remain at home, the court shall make a finding that  
 213 any lack of preplacement preventive efforts was appropriate.

214 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or  
215 neglect are involved, neither the division nor the court has any duty to make "reasonable  
216 efforts" or to, in any other way, attempt to maintain a child in his home, return a child to  
his  
217 home, provide reunification services, or attempt to rehabilitate the offending parent or  
parents.  
218 (13) The court may not order continued removal of a minor solely on the basis of  
219 educational neglect as described in Subsection 78-3a-103 (1)[~~(s)~~](ii).  
220 (14) (a) Whenever a court orders continued removal of a minor under this section, it  
221 shall state the facts on which that decision is based.  
222 (b) If no continued removal is ordered and the minor is returned home, the court shall  
223 state the facts on which that decision is based.  
224 (15) If the court finds that continued removal and temporary custody are necessary for  
225 the protection of a child because harm may result to the child if he were returned home,  
it shall  
226 order continued removal regardless of any error in the initial removal of the child, or the  
failure  
227 of a party to comply with notice provisions, or any other procedural requirement of this  
chapter  
228 or Title 62A, Chapter 4a, Child and Family Services.

---

[\[Bill Documents\]](#)[\[Bills Directory\]](#)

[Comments/Suggestions](#) | [Utah State Home Page](#) | [Privacy Policy/Disclaimer](#)





Fiscal Note

SB0208s2 - Warrant for Removal of Minor From Home

**State Impact:**

Provisions of this legislation should not have any significant fiscal impact.

**Individual and Business Impact:**

No fiscal impact.

Office of the Legislative Fiscal Analyst  
2/26/2003 4:27:13 PM

---

[Comments/Suggestions](#) | [Legislature Home Page](#) | [State of Utah Home Page](#)

*Last Revised: 30 August, 2000*